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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

15 CR 607 (WHP)

6 JAMES CAPERS, TOMMY BROWN,  
7 JESSE IRVIN, MARQUISE  
8 ROCHESTER, EDWIN MOYE,  
9 CHRISTIAN McKNIGHT, UNIQUE  
10 CHRISTOPHER, DANTE RODGERS,

11 Defendants.

12 -----x  
13 New York, N.Y.  
14 January 29, 2016  
15 3:00 p.m.

16 Before:

17 HON. WILLIAM H. PAULEY III,

18 District Judge

19 APPEARANCES

20 PREET BHARARA  
21 United States Attorney for the  
22 Southern District of New York  
23 JASON SWERGOLD  
24 SCOTT A. HARTMAN  
25 Assistant United States Attorneys

ANDREW G. PATEL  
Attorney for Defendants Capers and Moye

NATALI J.H. TODD  
Attorney for Defendant Brown

JOHN A. DIAZ  
Attorney for Defendant Irvin

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1 Appearances (Continued)

2 SARAH KUNSTLER  
3 Attorney for Defendant Rochester4 KELLEY SHARKEY  
5 Attorney for Defendant McKnight6 ROBERT MOORE  
7 Attorney for Defendant Christopher8 THOMAS DUNN  
9 Attorney for Defendant Rodgers

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1                   THE COURT: The marshals may bring in the defendants.  
2 Call the case.

3                   THE DEPUTY CLERK: Matter on for a status conference,  
4 United States of America v. James Capers.

5                   MR. SWERGOLD: Good afternoon, your Honor. Jason  
6 Swergold and Scott Hartman for the government.

7                   THE COURT: Good afternoon, gentlemen.

8                   THE DEPUTY CLERK: Counsel for defendant Capers.

9                   MR. PATEL: Andrew Patel for Mr. Capers who is right  
10 there in the first row closest -- almost closest to you.

11                  THE COURT: Good afternoon, Mr. Patel. I note the  
12 presence of Mr. Capers in the jury box.

13                  MS. TODD: Good afternoon, your Honor. Natalie Todd  
14 for Mr. Brown who is seated in the front row in the middle.

15                  THE COURT: Very well. Good afternoon to you,  
16 Ms. Todd. I note Mr. Brown's presence.

17                  MR. DIAZ: John Diaz appearing for Mr. Jesse Irvin who  
18 is seated in the jury box, first row, first seat to the Court's  
19 right.

20                  THE COURT: Good afternoon, Mr. Diaz. I note  
21 Mr. Irvin's presence.

22                  MS. KUNSTLER: Sarah Kunstler for Marquise Rochester  
23 who is seated in the navy jumpsuit right in front of me.

24                  THE COURT: Very well. Good afternoon to you,  
25 Ms. Kunstler, and I note Mr. Rochester's presence.

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1 MR. PATEL: Good afternoon, your Honor. Andrew Patel,  
2 P-A-T-E-L, standing in for Jeffrey Pittell, P-I-T-T-E-L-L for  
3 Mr. Edwin Moye, with Mr. Moye's consent, who is seated in the  
4 second row.

5 THE COURT: Mr. Moye, do you consent, sir, to having  
6 Mr. Patel stand in today at this proceeding for your attorney  
7 Mr. Pittell?

8 DEFENDANT MOYE: Yes.

9 THE COURT: Very well, sir. I note your presence.

10 MR. PATEL: Thank you, your Honor.

11 THE DEPUTY CLERK: Counsel for Mr. McKnight.

12 MS. SHARKEY: Kelley Sharkey for Mr. McKnight.

13 Mr. McKnight is in the second row, second from the left.

14 THE COURT: Good afternoon, Ms. Sharkey, and I note  
15 Mr. McKnight's presence.

16 THE DEPUTY CLERK: Counsel for Mr. Christopher.

17 MR. MOORE: On behalf of Mr. Christopher, your Honor,  
18 Robert Moore, standing in for David Touger.

19 THE COURT: Mr. Christopher, do you consent to having  
20 Mr. Moore stand in for Mr. Touger today?

21 DEFENDANT CHRISTOPHER: Yes.

22 THE COURT: Counsel for Mr. Rodgers.

23 MR. DUNN: Thomas Dunn. Mr. Rodgers is right here in  
24 the gray.

25 I want to apologize for my lateness, not only to you,

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1 but to all the court personnel. I have no excuse for the  
2 lateness.

3 THE COURT: Thank you, Mr. Dunn. I note the presence  
4 of your client Mr. Rodgers in the gallery.

5 Mr. Swergold, briefly, what is the status of this  
6 matter.

7 MR. SWERGOLD: Your Honor, beginning on October 6, the  
8 government started making discovery available to the  
9 defendants. As the government discussed at the first pretrial  
10 conference, we started by prioritizing the individual  
11 discovery. Some cell phone returns, post-arrest statements,  
12 criminal history, documentation related to the arrests in this  
13 case.

14 The government then began rolling productions in  
15 November and January, and at this point, discovery is  
16 voluminous, there is a lot of warrant paperwork, search warrant  
17 returns, subpoena returns, recorded phone calls, 911 tapes, a  
18 lot of paperwork related to prior arrests.

19 The government thinks that discovery is substantially  
20 completed at this point, but there are still some returns that  
21 we received from prior investigative requests that we've made.  
22 Additionally, the government continues to investigate the case,  
23 so to the extent that the government identifies additional acts  
24 of violence, we would produce material related to those acts of  
25 violence as soon as we have it.

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1                   We think that the defense counsel has all of the  
2 discovery that they would need for the basis of motions, but  
3 there is certainly some stuff that could keep coming in as we  
4 go.

5                   THE COURT: Go ahead.

6                   MR. SWERGOLD: I was going to say the last production  
7 the government made was on January 12, and that was another  
8 voluminous production, but it also was a little bit later  
9 because we had some issues with encrypting the discovery. So  
10 we worked with the discovery coordinator on that, and we were  
11 able to get it out to defense counsel, but it was a later than  
12 we wanted to.

13                  THE COURT: The record should reflect that back on  
14 December 2 of 2015, this Court appointed a discovery  
15 coordinator to manage the production of discovery for defense  
16 counsel. And I received a report, which I understand the  
17 discovery coordinator has shared with all counsel in the case,  
18 dated January 28, reporting on the two global productions that  
19 have been made by the government.

20                  MR. SWERGOLD: Your Honor, I just point out the  
21 government hasn't actually seen that report. I think it was  
22 only shared with defense counsel.

23                  THE COURT: Oh, really?

24                  MR. SWERGOLD: We know what we produced, so I think it  
25 is okay that we haven't seen it.

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1                   MR. PATEL: The report was ex parte, your Honor. It  
2 was shared with defense counsel.

3                   THE COURT: I see that. Among defense counsel, where  
4 do we stand, Mr. Patel?

5                   MR. PATEL: Your Honor, we have about 55 gigabytes of  
6 material. As your Honor knows, the discovery coordinator is  
7 not doing individual coding, so it is just grouped coding.

8                   THE COURT: How many gigabyte once again?

9                   MR. PATEL: 55.

10                  THE COURT: One gigabyte is about 50,000 pages, right?

11                  MR. PATEL: If it was just pages, life would almost be  
12 simpler. But it is videos, audios, every format you can  
13 possibly imagine that something can be stored in, and there are  
14 no transcripts. So a lot of this material has to be reviewed  
15 in real time.

16                  To cut to the chase, your Honor, can we come back on  
17 April 15, and by then we'll have a much better idea of what  
18 we've got.

19                  Just to sort of illustrate the magnitude of this, the  
20 discovery produced in a single cell phone runs about 7,000  
21 pages. There's a lot more than one cell phone here, so we've  
22 got our hands full.

23                  THE COURT: All right. Well, we're going to fix a  
24 trial date today. I'm prepared to give you time to review the  
25 discovery. Can you tell me at this point what pretrial

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1 motions, if any, you want to make?

2 MR. PATEL: I'm really not at the point where I could  
3 give your Honor anywhere near a complete list.

4 THE COURT: Does any defense counsel have an idea as  
5 to what pretrial motions they wish to make?

6 In this case silence is not golden.

7 MR. PATEL: But it's truthful.

8 THE COURT: Right. I'm prepared to put it down for  
9 another conference date to fix a schedule. But you're here,  
10 you're all busy, and I'm going to fix a trial date.

11 Mr. Swergold, how long is it going to take for the  
12 government to try the case?

13 MR. SWERGOLD: Your Honor, I think the trial would  
14 take anywhere from four to six weeks, but that would also  
15 depend on how many defendants eventually go to trial. It could  
16 be less than that.

17 MR. PATEL: Your Honor, may I have a moment with the  
18 government?

19 THE COURT: Sure.

20 (Pause).

21 MR. PATEL: Your Honor, we've sort of, in anticipating  
22 your Honor might want to do this, sort of compared notes,  
23 calendars. Your Honor, if you were going to set a trial date  
24 today, we would request the day after Martin Luther King's  
25 birthday next year. Mid January 2017.

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1                   THE COURT: You can suggest it, but I'm going to set  
2 it down for November 28 for jury selection and trial. The  
3 Monday after Thanksgiving. That's plenty of time to resolve  
4 any motions, and if the case compresses I can advance the trial  
5 date. But I'm not going to extend it.

6                   In terms of a further conference to consider the  
7 matter, I can put it down on April 13, Wednesday, April 13, for  
8 a conference, if that would be convenient for counsel.

9                   MR. PATEL: Your Honor, I have an obligation in White  
10 Plains that day. I can get someone to cover for me up there if  
11 that's the only day available that week.

12                  MS. SHARKEY: Judge, I'm also unavailable. I'm  
13 engaged in a matter in a District Court in Newark, but I think  
14 I'm going to be engaged through the beginning of May. So I  
15 will anticipate having someone cover for me in the event the  
16 Court sets an earlier date, and I've spoken with my client who  
17 is okay with that.

18                  THE COURT: All right. Let's put it down for  
19 Wednesday, April 13. You said, Mr. Patel, that you could get  
20 someone to cover for you in White Plains?

21                  MR. PATEL: I'm almost certain I can, your Honor.

22                  THE COURT: Great. Because I would like you to be  
23 here.

24                  April 13, at 2 o'clock. And at that time, it would be  
25 my intention to hear what motions the defendants want to make,

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1 so that I can fix a motion schedule and any evidentiary  
2 hearings that may be necessary in connection with those  
3 motions.

4 So, are there any other issues that counsel want to  
5 raise?

6 MR. SWERGOLD: Your Honor, the government would just  
7 note for the record that on December 21, 2015, the government  
8 received the attorney general's decision regarding seeking of  
9 the death penalty with respect to Mr. Capers, and that decision  
10 was that we were directed not to seek the death penalty and  
11 authorized not to seek it.

12 THE COURT: All right. Thank you, Mr. Swergold.  
13 Anything further from the government?

14 MR. SWERGOLD: Your Honor, the government would move  
15 to exclude time between now and April 13, 2016, so that defense  
16 counsel can continue to review discovery and contemplate any  
17 motions, the government can produce any additional documents  
18 that come in, and all parties can continue to discuss pretrial  
19 resolutions of this case.

20 THE COURT: What are the defendants' respective views  
21 concerning the exclusion of time between now and April 13,  
22 2016?

23 MR. PATEL: No objection.

24 MS. SHARKEY: No objection.

25 MS. TODD: No objection.

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1 MS. KUNSTLER: No objection.

2 MR. DUNN: No objection.

3 THE COURT: Since this continuance is due to the  
4 defendants' need to continue their review of voluminous  
5 discovery produced by the government in order to determine what  
6 motions, if any, to make, I prospectively exclude the time from  
7 today until April 13, 2016, from Speedy Trial Act calculations.  
8 I find that this continuance serves to ensure the effective  
9 assistance of counsel and prevents any miscarriage of justice.  
10 Additionally, I find that the ends of justice served by such a  
11 continuance outweigh the best interests of the public and each  
12 of these defendants in a speedy trial pursuant to 18 U.S.C.  
13 Section 3161.

14 Anything further?

15 MR. SWERGOLD: Not from the government.

16 MR. PATEL: No. Thank you, your Honor.

17 MS. TODD: No, your Honor.

18 MS. SHARKEY: Thank you, Judge.

19 MS. KUNSTLER: Thank you, your Honor.

20 THE COURT: Everyone is to remained seated, including  
21 counsel, until the defendants are escorted from the courtroom.  
22 This matter is adjourned. Have a good afternoon, everyone.

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